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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1602–92]

Classification of Certain Scientists of the Commonwealth of Independent States of the Former Soviet Union and the Baltic States as Employment-Based Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with requests for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (''the Service'') regulations by revising the procedures which establish eligibility of certain scientists and engineers from the former Soviet Union for permanent residence under the Soviet Scientists Immigration Act of 1992. This rule is necessary to clearly identify those scientists who qualify under that law for permanent resident status, thereby preventing their migration into the employ of hostile governments seeking to develop weapons that can threaten the world's security.

DATES: This interim rule is effective October 19, 1995. Written comments must be submitted on or before December 18, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference INS number 1602–92 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Michael Straus, Senior Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street NW., Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: The Soviet Scientists Immigration Act of 1992 (SSIA), Public Law 102–509, dated October 24, 1992, provides that up to 750 immigrant visas may be allotted under section 203(b)(2)(A) of the Immigration and Nationality Act (Act) to eligible scientists of the independent states of the former Soviet Union and the Baltic states, by virtue of their expertise in nuclear, chemical, biological or other high-technology fields or their current work on nuclear, chemical, biological or other high-technology defense projects. The provisions of the SSIA will terminate on October 24, 1996, or when the Immigration and Naturalization Service has approved a total of 750 petitions on behalf of eligible scientists, whichever date is earlier.

This rule amends § 204.10 which was added by an interim rule, published in the Federal Register on May 27, 1993, at 58 FR 30699–30701. This rule establishes petitioning procedures and eligibility requirements for obtaining SSIA benefits. The Service has concluded that revisions of the previous interim rule are necessary to improve the visa petition process, thereby furthering the goal of preventing hostile governments from employing these scientists with expertise in weapons of mass destruction. The amendments introduced in this rule reflect not only the written comments received during the comment period which ended on June 28, 1993, but also comments offered afterward by private parties and discussions with government officials interested or involved in the adjudication of petitions under the previous interim rule. Because these revisions introduce significant changes in the previous interim rule, the Service is soliciting public comments. The revisions developed in response to particular issues as well as a discussion of the public comments are summarized and discussed below.

Jurisdiction Over an SSIA Petition

One commenter suggested that scientists who leave the territory of the former Soviet Union after the SSIA's enactment should be allowed to apply directly for an SSIA immigrant visa at any U.S. embassy or consulate abroad, without Service approval of a petition, and also be granted an automatic waiver of travel document requirements. A U.S. Embassy or consulate, which is under the authority of the Secretary of State, has no authority to adjudicate an SSIA petition. Under section 4 of the SSIA, the Attorney General has the exclusive responsibility for adjudicating SSIA visa petitions; this authority has not been delegated to the Secretary of State. The decision to waive documentary requirements is wholly within the discretion of the Embassy or consulate where the immigrant visa application is pending.

The legislative history indicates that the SSIA was intended ''to speed the process and remove existing obstacles'' with respect to the immigration of qualified scientists from the former Soviet Union. See Statement of Senator Brown in 138 Cong. Rec. S1249 (daily ed. Feb. 6, 1992). The interim rule allowed applicants, who were in the United States and eligible to apply for adjustment of status under section 245 of the Act, the option of filing Form I–140, Immigrant Petition for Alien Worker, concurrently with Form I–485, Application to Register for Permanent Residence or Adjust Status, either at a service center, or at the local district office having jurisdiction over the alien applicant's place of residence in the United States.

Since the interim rule has been in effect, service centers have been able to promptly adjudicate SSIA petitions. By handling greater numbers of these specialized cases than district offices, the service centers have developed expertise in adjudicating these petitions. This expertise has enabled them to promptly determine whether the alien has a bonafide claim to SSIA benefits. The service centers are also better equipped to capture and report required data concerning the number of approved SSIA petitions. By centralizing the adjudication of SSIA petitions at service centers, the Service can achieve enhanced coordination with other government agencies which may have pertinent information related to a petition. Accordingly, this interim rule provides that the service centers will adjudicate all SSIA petitions, unless specifically designated for local filing by

the Associate Commissioner for Examinations.

Definition of Eligible Scientist

One commenter objected to the requirement in the interim rule that the alien establish exceptional ability in the field, contending that the SSIA does not require a showing of exceptional ability. Section 4(a) of the SSIA provides that ''the Attorney General shall designate a class of * * * scientists, based on their level of expertise, as aliens who possess 'exceptional ability' in the sciences for purposes of section 203(b)(2)(A) of the Act.'' Although, as noted by the commenter, section 4(a) of the SSIA allows allocation of visa numbers from the employment-based second category, it also refers to the ''level of expertise'' relating to exceptional ability. The language of section 4(a) of the SSIA plainly requires exceptional ability in the sciences, as determined by the alien's field of expertise. As noted in the previous interim rule, because these scientists constitute a specialized group, the criteria to establish exceptional ability is limited. If an SSIA applicant satisfies the evidentiary criteria in 8 CFR 204.10(e)(2), he or she meets the exceptional ability requirement.

Two commenters asserted that the interim rule should be expanded to include aliens involved in non-defense projects and that eligibility should not be limited to scientists with expertise related to a defense project. Section 2(3)(B) of the SSIA defines eligible scientists as those who have expertise either in nuclear, chemical, biological, or other high technology fields, or who are working on nuclear, chemical, biological, or other high-technology defense projects. The previous interim rule provided that the petitioner present evidence that the alien has expertise in the specific field as it relates to a defense project. The Service agrees that the rule should be clarified to reflect that the expertise need not be related to a specific defense project, as long as the expertise is in nuclear, chemical, biological, or other high-technology defense fields having clear application to weapons of mass destruction. However, as mentioned in the preamble to the previous interim rule, the SSIA and the legislative history clearly indicate that not every scientist from the former Soviet Union is meant to benefit from this provision. Senator Brown stated that the SSIA covers those scientists who ''have specialized in weapons of mass destruction.'' See 138 Cong. Rec. S1249 (daily ed. Feb. 6, 1992). The phrase ''expertise in other high technology fields'' in the previous interim rule may have been misinterpreted. Congress intended to limit eligibility under the SSIA to scientists or engineers having expertise clearly applicable to the development or use of weapons of mass destruction. For example, a scientist who, in the course of conducting medical research, has developed a bio-chemical agent which can be used in biological warfare may, under center circumstances, be able to establish eligibility for classification under the SSIA. On the other hand, a nuclear power plant engineer who cannot clearly demonstrate the requisite statutory expertise would be ineligible for SSIA classification. This interim rule will, therefore, be amended to clarify these matters. This rule amends the definition of eligible independent states and Baltic scientists to include scientists or engineers who have expertise in a high-technology field which is clearly applicable to the design, development, and production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction, or who are working on, the design, development, and production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction.

One commenter suggested that the definition under § 204.10(d) should include scientists involved in research related to the design, development, and production of ballistic missiles. The commenter was of the opinion that the inclusion of the word ''research'' would help to prevent Service adjudicators from interpreting the qualifying activities as being exclusive. The original interim rule cites ''the design, development, and production of ballistic missiles'' as an example of the expertise possessed by the intended beneficiaries of this legislation; namely, ''scientists who have specialized in developing weapons of mass destruction.'' That example, however, is not an exclusive test for eligibility. Neither the May 27, 1993, interim rule nor this interim rule would deny SSIA benefits to a scientist whose work has clear applicability to the development of such weapons, whether that work is characterized as ''research,'' ''design,'' or any other appropriate term.

Another commenter was of the opinion that requiring supporting testimony from recognized experts is impractical because the defense industry in the former Soviet Union remains shrouded in secrecy and persons may face sanctions for revealing information on defense-related projects. According to several commenters and representatives of interested government agencies, some scientists who are most qualified for the benefits of the SSIA currently live under constraints of censorship which hinder them from submitting full documentation of their qualifications, or from procuring testimonials from qualified authorities in their countries.

In order to provide additional opportunities for qualified scientists who may be unable to obtain the necessary written testimony from experts, this rule allows for consultation with other government agencies having expertise in defense matters. The applicant must submit a statement as to how he or she qualifies under the SSIA. In evaluating the claimed qualifications of beneficiaries in such circumstances, the Service may consult other United States Government agencies having expertise in defense matters including, but not limited to, the Department of Defense, the Department of State, and the Central Intelligence Agency. In these cases the Service may, in the exercise of administrative discretion, accept a favorable report in lieu of the documentation prescribed in § 204.10(e)(2) (ii) or (iii).

The previous interim rule at § 204.10(e)(2) prescribed certain documentation to establish a beneficiary's qualifications for classification under the SSIA. The required documentation included written testimony regarding the alien's qualifications from either two recognized national or international experts in the same field or from an official of an agency of the United States Government. Two commenters found this documentary requirement to be excessively restrictive. One commenter suggested that the rule be revised to allow an applicant to submit an opinion from any credible, competent witness, such as a university professor or an individual from private industry who is an expert in the field, or other documentary evidence, such as a true copy of the alien's university diploma, evidence of secret clearance from the former Soviet Government, or a detailed declaration by the alien. The Service does not agree with the recommendation that the documentary requirements should be relaxed. In adjudicating SSIA visa petitions, the service has identified certain problems which need to be addressed to ensure that only qualified scientists are approved under the SSIA. Among other things, the current economic difficulties confronting weapons systems scientists of the former Soviet Union also affect much larger numbers of aliens who are not qualified under the SSIA. The Service has received written statements submitted on behalf of unqualified

individuals which, on their face, indicate that the alien has expertise in nuclear, biological, chemical, or other fields involving weapons of mass destruction. Therefore, additional evidence is required. One commenter suggested that the ''Trudavaya Knizhka,'' an official work document from the former Soviet Union which summarizes one's work experience, be considered acceptable evidence. The Service agrees that the ''Trudavaya Knizhka'' is an important and relevant document. In addition, the applicant should present other relevant documentation, such as evidence of significant awards or publications. This interim rule requires the alien to submit the ''Trudavaya Knizhka,'' evidence of significant awards or publications, and other comparable evidence. If the alien lacks any of these documents, he or she must explain why they are not available.

This rule also regularizes the processing of requests made to United States Government agencies for written testimonials and enhances the reliability of endorsements issued by government agencies. This rule provides that the authority of a United States Government agency to issue endorsements regarding a Soviet scientist's qualifications is vested in the agency's ''head or duly appointed designee.'' The authority to make certifications under this provision is presumed to be vested exclusively in the agency head, unless that agency notifies the Commissioner of the Immigration and Naturalization Service in writing of other officials to whom that authority has been delegated. Each agency that chooses to participate in this program retains the right to determine its own review procedures.

Because the SSIA waives the job offer requirement in section 203(b)(2)(A) of the Act, the Service determined that the labor certification requirement is also waived in the case of an eligible scientist. To properly identify eligible scientists, the Service requires an orderly statement of their qualifications. The information contained in Part B of the Department of Labor Form ETA 750, Application for Alien Employment Certification, which lists the alien's qualifications and experience, will clarify and expedite the adjudication of an SSIA petition. The petition shall also include a supplementary statement of the beneficiary's relevant experience within the past 10 years. The Form ETA 750 Part B can be prepared either by the alien or by the petitioner.

Numerical Ceiling

Section 4(c) of the SSIA provides that no more than 750 petitions may be approved on behalf of eligible scientists. The Service may not, therefore, accept additional petitions under the SSIA if the ceiling of 750 principal beneficiaries has been reached prior to October 25, 1996. Accordingly, the language of § 204.10(a) is amended to clarify this matter.

All of the visa numbers issued to the scientists and to their spouses and children under the SSIA are being deducted from the employment-based immigrant visa quota under section 203(b)(2) of the Act. A number of commenters and Service field offices have expressed concern as to the method by which the numbers of immigrant visas issued under this provision will be counted for recordation. In order to enable the Service to count the number of visas allotted to the principal scientist beneficiaries under this law, a new immigrant visa code has been developed for them: ES1 in the case of a scientist admitted from abroad, and ES6 in the case of a scientist who adjusted status in the United States. Spouses and unmarried children of SSIA beneficiaries will be classified as accompanying or following to join under the employment-based second preference.

Termination Date

Section 4(d) of the SSIA states that the authority of subsection (a), under which the Attorney General designates a class of scientists from the former Soviet Union for purposes of section 203(b)(2)(A) of the Act, terminates 4 years after enactment of the SSIA. The authority to designate the class, therefore, expires on October 24, 1996. Under the language of section 4(d) of the SSIA, the authority to classify a qualified Soviet scientist terminates on that date. The Service may grant an applicant SSIA classification only upon approval of the I–140 petition.

The original interim rule provided that an SSIA applicant meets the statutory deadline by filing a petition on or before October 24, 1996. As noted above, the statute requires the applicant to receive SSIA classification before that date. Accordingly, this interim rule requires that the applicant must have an SSIA petition approved on his or her behalf on or before October 24, 1996.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). The reasons and the necessity for the immediate implementation of this interim rule are as follows: The national security considerations which were discussed in the May 27, 1993, interim rule at 58 FR 30700, apply equally to this rule. This grave economic and military situation in the former Soviet Union continues to raise concerns that some of the leading scientists of the former Soviet Union may be driven ''to market their skills to unscrupulous nations bent on developing weapons that can threaten the world's security.'' See 138 Cong. Rec. S1249 (daily ed. Feb. 6, 1992). The changes established in this rule, based on the Service's experience in adjudicating SSIA petitions, are necessary to ensure that the goals of the SSIA will be accomplished. In addition, the approaching termination date for benefits under the SSIA increases the urgency of implementing this rule to expedite the timely filing and adjudication of such cases before the statute expires.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule merely modifies existing regulations concerning the immigration of up to 750 scientists from the former Soviet Union. It will not significantly change the number of persons who immigrate to the United States. Any impact on small business entities will be, at most, indirect and attenuated.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waive its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Executive Order 12606

The Commissioner of Immigration and Naturalization Services certifies that she has assessed this rule in light of the criteria in Executive Order 12606

and has determined that it will have no effect on family well-being.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, display of control numbers.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

2.Section 204.10 is amended by:

a. Removing the last two sentences in paragraph (a) and adding a new sentence in their place;

b. Revising paragraph (b);

c. Revising paragraph (d);

d. Revising paragraph (e)(2);

e. Redesignating paragraph (g) as paragraph (h);

f. Adding a new paragraph (g); and by

g. Revising newly redesignated paragraph (h) to read as follows:

§ 204.10 Petitions by, or for, certain scientists of the Commonwealth of Independent States or the Baltic states.

(a) *General.* * * * The Service must approve a petition filed on behalf of the alien on or before October 24, 1996, or until 750 petitions have been approved on behalf of eligible scientists, whichever is earliest.

(b) *Jurisdiction.* Form I–140 must be filed with the service center having jurisdiction over the alien's place of intended residence in the United States, unless specifically designated for local filing by the Associate Commissioner for Examinations. To clarify that the petition is for a Soviet scientist, the petitioner should check the block in part 2 of Form I–140 which indicates that the petition is for ''a member of the professions holding an advanced degree or an alien of exceptional ability'' and clearly print the words ''SOVIET SCIENTIST'' in an available space in Part 2.

* * * * *

(d) *Definitions.* As used in this section:

Baltic states means the sovereign nations of Latvia, Lithuania, and Estonia.

Eligible independent states and Baltic scientists means aliens:

(i) Who are nationals of any of the independent states of the former Soviet Union or the Baltic states; and

(ii) Who are scientists or engineers who have expertise in a high-technology field which is clearly applicable to the design, development, or production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction, or who are working on the design, development, and production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction.

Independent states of the former Soviet Union means the sovereign nations of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

(e) * * *

(2) Evidence that the alien possesses exceptional ability in the field. Such evidence shall include:

(i) Form ETA 750B, Statement of Qualifications of Alien and a supplementary statement of relevant experience within the past ten years; and

(ii) Written testimony that the alien has expertise in a field described in paragraph (d) of this section, or that the alien is or has been working on a high-technology defense project or projects in a field described in paragraph (d) of this section, from either two recognized national or international experts in the same field or from the head or duly appointed designee of an agency of the Federal Government of the United States; and

(iii) Corroborative evidence of the claimed expertise, including the beneficiary's official Labor Record Book (Trudavaya Knizhka), any significant awards and publications, and other comparable evidence, or an explanation why the foregoing items cannot be submitted; or

(iv) In the case of a qualified scientist who establishes that he or she is unable to submit the initial evidence prescribed by paragraphs (e)(2) (ii) or (iii) of this section, a full explanation and statement of the facts concerning his or her eligibility. This statement must be sufficiently detailed so as to enable the Service to meaningfully consult with other government agencies as provided in paragraph (g) of this section.

* * * * *

(g) *Consultation with other United States Government agencies.* In evaluating the claimed qualifications of applicants under this provision, the Service may consult with other United States Government agencies having expertise in defense matters including, but not limited to, the Department of Defense, the Department of State, and the Central Intelligence Agency. The Service may, in the exercise of discretion, accept a favorable report from such agency as evidence in lieu of the documentation prescribed in paragraphs (e)(2) (ii) and (iii) of this section.

(h) *Decision on and disposition of petition.* If the beneficiary is outside of the United States, or is in the United States but seeks to apply for an immigrant visa abroad, the approved petition will be forwarded by the service center to the Department of State's National Visa Center. If the beneficiary is in the United States and seeks to apply for adjustment of status, the approved petition will be retained at the service center for consideration with the application for adjustment of status. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR part 103.

Dated: August 24, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–25931 Filed 10–18–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 773, 778 and 799

[Docket No. 951004245–5245–01]

RIN 0694–AB20

Revisions to the Export Administration Regulations: Exports of Sample Shipments Containing Precursor and Intermediate Chemicals; Revision to Australia Group Members; Aqueous Hydrofluoric Acid; and Clarifications

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), as part of the Export Administration Regulations (EAR). The changes made by this rule are based on discussions in the Australia Group (AG) and suggested changes by industry.